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Attorneys for United States of America

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,	)	No. CR 08-00164 RS
	)	
Plaintiff,	)	<b>STIPULATION AND [PROPOSED] ORDER</b>
	)	<b>REGARDING WAIVER OF PRIVILEGE</b>
v.	)	
	)	
W. SCOTT HARKONEN,	)	
	)	
Defendant.	)	
	)	
	)	

The parties stipulate and agree, and the Court finds upon a showing of good cause, that by his Petition for Writ of Error Coram Nobis ("Petition"), dated July 30, 2014, the defendant W. Scott Harkonen raises several issues with respect to his prior counsel's representation and that the United States cannot fully respond to these claims without the requested waiver of the attorney-

STIPULATION AND [PROPOSED] ORDER  
CR 08-00164 RS

1 client privilege and requested discovery.

2 The parties further stipulate and agree, and the Court finds, that the defendant has waived  
3 the attorney-client privilege in limited part, specifically as to the following areas:

- 4 1. The decision to present or not present expert evidence at trial regarding the  
5 truthful (i.e., non-false and non-misleading) presentation and interpretation  
6 of drug study data and regarding the question of whether the statements in  
7 the press release were actually false or misleading, *see* Petition, at 60-63;
- 8 2. Whether presentation of expert evidence at trial would have assisted the  
9 defendant's First Amendment defenses, *see id.* at 63-64;
- 10 3. The decision to present or not present expert evidence at trial regarding the  
11 materiality or non-materiality of the statements in the press release, *see id.*  
12 at 64-65;
- 13 4. Whether expert evidence regarding any of the areas listed above would have  
14 acted as circumstantial evidence of the defendant's non-fraudulent mental  
15 state, *see id.* at 65; and
- 16 5. The approach, nature, and scope of the cross-examination of the  
17 government's expert and other witnesses, *see id.* at 65-68; *see also id.* at 29  
18 (quoting Order denying Rule 29 motion).

19 The parties further stipulate and agree, and the Court so finds, that the United States is  
20 entitled to inquire of attorneys Marcus Topel, Lyn Agre, William Goodman, and other attorneys  
21 who participated in the trial and defense of this matter ("trial team") regarding the trial team's  
22 decisions, thought processes, and opinions with respect to issues 1 through 5 listed above, as well  
23 as with respect to any oral communications with the defendant related to those subject areas and,  
24 furthermore, any written communications, notes, and materials relating to those subject areas. The  
25 trial team is authorized to provide the requested privileged information and materials to the United  
26 States, and to file pertinent declarations with the Court concerning the claims raised in the  
27 Petition.

28 The parties further stipulate and agree, and the Court so holds, that the United States is  
precluded from using the privileged information and materials provided to the United States by the  
trial team for any purpose other than litigating the defendant's Petition, and that the United States  
may not disclose these privileged information and materials to any other persons, excluding other  
representatives of the United States Attorney's Office and United States Department of Justice  
who are assisting in responding to the defendant's Petition.

1 Finally, the parties stipulate and agree, and the Court so holds, that notwithstanding the  
2 foregoing the defendant reserves his right to object to the admission of any privileged information,  
3 documents, or other materials obtained from the trial team that the defendant believes do not fall  
4 within the scope of this waiver.

5  
6 SO STIPULATED:

7 Dated: September 9, 2014

MELINDA HAAG  
United States Attorney

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9  
10 /s/  
KYLE F. WALDINGER  
Assistant United States Attorney  
11 ALLAN GORDUS  
Trial Attorney  
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13  
14 Dated: September 9, 2014

/s/  
DENNIS P. RIORDAN  
Attorney for defendant Harkonen  
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17 SO ORDERED:

18 Dated: September 9, 2014

  
HONORABLE RICHARD SEEBORG  
United States District Judge  
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